



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

JM:NR
F.#2010R00609

*271 Cadman Plaza East
Brooklyn, New York 11201*

September 2, 2011

BY REGULAR MAIL AND ECF

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Re: United States v. Michael Metter, et. al.,
Criminal Docket No. 10-600 (DLI)

Dear Counsel:

I write in connection with the government's discovery obligations in the above-captioned matter.

Kenneth Silverman, Esq., the Chapter 11 Operating Trustee ("Trustee") to Spongetech Delivery Systems, Inc. ("Spongetech"), has informed the government that the Trustee has waived any assertion of attorney-client privilege or any other applicable privilege by Spongetech with respect to all documents, e-mails, or other communications, whether in hard copy or electronic format, that the government seized during the course of its investigation of Spongetech.¹

As a result of this waiver, the government will filter only the names and e-mail addresses identified in Maranda Fritz's April 22, 2011 letter to the government (the "April 22 letter") of attorneys who represented Spongetech employees in an individual capacity. Based on the April 22 letter, the government's understanding of who certain defendants are claiming represented them in an *individual* capacity is:

- Scott Rosen (Metter);
- Michael Mulpeter (Metter);
- Avraham Moskowitz (Tepfer and Kolevzon); and
- Roger Fidler (Monahan).

If you believe this list is incomplete, please let us know the name of anyone you believe has been incorrectly omitted and a detailed description of the basis for their inclusion on this list by no later than September 9, 2011.

Additionally, to further streamline the filtering process, please provide us with the following information as soon as possible. In the April 22 letter, counsel identified computers that may include privileged materials as coming from certain rooms. As there were rooms labeled, for instance, "Room C" or "Room B," in both of the West 33rd St. office suites where the search warrants were executed, it would be useful if counsel could clarify which particular site they were referencing in the April 22 letter.

Further, you can obtain images of the 27 hard drives for which no privilege issue was identified in the April 22 letter by sending a hard drive for each drive you wish to be imaged to Internal Revenue Service, Criminal Investigations Group 1317, Attn: Special Agent John Carrano, 1180 Veterans' Memorial Highway, Hauppauge, NY 11788. To avoid doubt, the following hard drives are those as to which no privilege issues were identified by counsel and which are available to be imaged:

¹ Steven Moskowitz has also waived his privilege claim with respect to any communications with Louis Brilleman.

- 1 computer in Room A at 10 West 33rd St., Suite 518, New York, NY (Image #1);
- 1 computer in Room F at 10 West 33rd St., Suite 518, New York, NY (Image #16);
- 12 computers in Room J at 10 West 33rd St., Suite 518, New York, NY (Images #18-29);
- 3 computers in Room N at 10 West 33rd St., Suite 518, New York, NY (Images #30-32);
- 1 computer in Room F at 43 West 33rd St., Suite 600, New York, NY (Image #52);
- 6 computers in Room H at 43 West 33rd St., Suite 600, New York, NY (Images #56-61); and
- 3 computers seized from 1455 Bay Ridge Parkway, Apt. 3F, Brooklyn, NY (Images #66-68).

Additionally, for the sake of completeness, the government notes that images of the certain hard drives have already been requested by and provided to counsel in May 2011. Counsel for Mr. Metter received Images #7, 49, 62-65, and counsel for Mr. Tepfer received Images # 5, 8, 10-15, 33-39, 41-42.

Please do not hesitate to contact me with any questions or concerns. I can be reached at 718.254.6196 or at nathan.reilly@usdoj.gov.

Respectfully yours,

LORETTA E. LYNCH
United States Attorney

By: /s/
Nathan Reilly
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cc: Clerk of the Court (DLI) (By Hand and ECF)